IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

Criminal Appeal No.297 of 2007

The State of Maharashtra .. .. Appellant
(Orig. complainant)

v/s.

Vikas Gajanan Mhatre & anr. .. .. Respondents
(Orig. Accused)

Mr.P.S. Hingarani, APP for Appellant.

Mr.M.S. Mohite for Respondent Nos.1 & 2.

CORAM : DR.S. RADHAKRISHNAN &

SMT.ROSHAN DALVI, JJ.

Dated : 5th July, 2007

P.C. :

1. Heard the learned APP for the Appellant and the learned Counsel for the Respondents.

2. By this Appeal, the Appellant-State is challenging the order dated 7th February 2007 passed by the learned III Additional Sessions Judge, Thane, granting bail to the

Respondents herein in a case registered against them under Sections 307, 120(B) read with Section 34 of Indian Penal Code and under Sections 3, 25(1)(A), 27 of Arms Act read with Section 3 of Maharashtra Control of Organised Crime Act, 1999 (hereinafter, for the sake of brevity, referred to as the "MCOC Act").

3. Brief facts are that both the Respondents (original Accused) herein were arrested on 7th September 2006 for the aforesaid offences. In normal course, the Respondents ought to have filed a charge-sheet within a period of 90 days in view of the special proviso provided under Section 21 of the MCOC Act. The said proviso contemplates that the Special Court is empowered to extend the above period of 90 days upto 180 days on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the Accused beyond the said period of 90 days. It appears that, in the instant case, the Appellant-State had made an application for extension of

period by 45 days before 6th of December 2006. The Court had granted the said extension for a further 45 days, which expired on 19th January 2007. The last date of filing the charge-sheet by the Investigating Officer was 19th January 2007. However, it appears that the Appellant-State chose to move the Court only on 18th January 2007 for a further period of extension by 45 days, as permitted under Section 21 of the MCOC Act.

4. The learned Sessions Judge, when the aforesaid Application was made on 18th January 2007, declined to grant any such extension without notice and observed in the impugned order that if any effective notice is to be given to the Accused, the Accused should be able to oppose the said extension. Obviously, since the Respondents-Accused were in custody and the next date was the last date for filing charge-sheet, the Accused would not have been able to oppose the same effectively. It may be noted here that when the application was made on 18th January 2007, no prior notice was given to the Respondents.

5. The learned Sessions Judge has strongly relied on a Division Bench judgement of our Court in the case of ***Kamlakar Lachhayya Ollala & anr. vs. State of Maharashtra & anr.*** reported in **2004 (1) Bom.C.R. (Cri.) 310**. Though the aforesaid judgement deals with the provisions of Prevention of Terrorist Activities Act, 2002, the learned APP conceded that the provisions of POTA as well as MCOC Act are identical with regard to the issue involved in the present case. The laws are identical and while dealing with the same, the Division Bench in paragraphs 17, 18, 19, 20 and 21 thereof, has clearly held that as the detenu has right to oppose, and such an extension can never be granted without a proper notice to the detenus to effectively oppose. In the instant case, no effective notice could have been given to the Accused as the application was made on 18th January 2007 and the last date for filing charge-sheet was 19th January 2007.

6. Under these circumstances, we do not find any error or illegality in the impugned order passed by the learned

Sessions Judge. Hence, no interference is called for. The Appeal is devoid of any merit and the same is, therefore, dismissed.

(DR.S. RADHAKRISHNAN,J.)

(SMT.ROSHAN DALVI, J.)